

Dismissal for Failure to Submit Required Documents
11 U.S.C. § 521
BR Act Section 316 of P.L. 109-8

This section mandates that a chapter 7 or 13 case be dismissed if the debtor fails to file all information required by 11 U.S.C. § 521 within 45 days after the filing of the petition. The court still has the authority to dismiss a case before the 45 days have run.

This section also permits any party in interest to request the court to enter an order dismissing the case. The court must enter the order not later than five days after the request. There is an interpretation issue to consider with respect to this provision. The motion from a party to have the court enter an order of dismissal within 5 days could be interpreted as either:

- the party can request an order of dismissal after the 45 days has run and the case has already been automatically dismissed, or*
- the party can request the order of dismissal after the court's deficiency notice deadline has passed, but before the 45 days have run. The consensus of the Group is that the latter interpretation was correct.*

I. CASE FILED WITHOUT ALL REQUIRED DOCUMENTS

A. Clerk Issues Deficiency Notice

1. The court-imposed deadline is shorter than the 45 days from the date the petition is filed;
2. If the deadline arrives and the documents are not filed, the clerk should generate an order of dismissal to be signed by the judge;
3. If the court does not set an earlier deficiency date, the order of dismissal should be generated for signature by the judge, incorporating the 46th day as the effective date of dismissal.

B. Party Requests Order of Dismissal Under 11 U.S.C. § 521(i)(2)

1. If not already entered, the court shall enter order of dismissal within 5 days of request, if the debtor has not filed a motion to extend the time to file the required documents.
2. When a party requests an order of dismissal and the 45 days (or shorter time frame, if so set by the local court) has already expired, no notice and hearing is required, as the case will be dismissed pursuant to 11 U.S.C. § 521(i)(2).

C. Trustee Motion to Not Dismiss Case

1. Under § 521(i)(4), the Trustee may move to request the court to decline to dismiss the case if, after notice and hearing, the court finds that:
 - a. the debtor attempted in good faith to file all the required information, and
 - b. The best interests of the creditors would be served by administration of the case.
2. The motion by the Trustee must be filed before any of the applicable time periods in § 521(i)(1),(2), or (3) have expired.